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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Cost-Based Terminating Compensation for CMRS
Providers

CC Docket Nos. 96-98, 95-185 ✓

WT Docket No. 97-207

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, released May 11, 2000, AT&T Corp. ("AT&T") hereby submits its comments in the above-captioned proceeding.^{1/} AT&T urges the Commission to reject Sprint PCS's ("Sprint's") request that parties delivering local calls to commercial mobile radio service ("CMRS") networks pay reciprocal compensation rates that take into account the claimed higher costs of mobile technology.^{2/}

INTRODUCTION AND SUMMARY

The Commission should reject Sprint's request because it would give carriers incorrect and inefficient incentives regarding network deployment and technology choice, have far-reaching effects on all cost-recovery mechanisms, and unnecessarily complicate intercarrier compensation processes. The Commission has consistently used models that employ forward-

^{1/} Public Notice, Comment Sought on Reciprocal Compensation for CMRS Providers, DA 00-1050 (released May 11, 2000).

^{2/} See Letter from Jonathan M. Chambers, Vice President, Regulatory Affairs, Sprint PCS, to Magalie Roman Salas, Secretary, FCC, and attached legal memorandum, CC Docket Nos. 95-185, 96-98, WT Docket No. 97-207 (Feb. 2, 2000) ("Sprint Legal Memorandum"); Transport and Termination Costs in PCS Networks: An Economic Analysis, Prepared by Bridger M. Mitchell and Padmanabhan Srinagesh, CC Docket Nos. 95-185, 96-98; WT Docket No. 97-207 (Apr. 4, 2000) ("Sprint White Paper").

looking economic cost principles to establish compensation between carriers, and has found those models and their principles to be consistent with the Communications Act even if they do not cover the actual expenses of each and every carrier. The Commission should continue to require the use of its Total Element Long Run Incremental Cost (“TELRIC”) principle, which calculates costs using the most efficient wireline technology available at 100 percent of demand to establish reciprocal compensation rates for interconnecting carriers. Any excess costs incurred by carriers that employ less efficient technologies or technologies that display different ratios of fixed to variable costs are more properly the responsibility of the terminating end user.

I. THE COMMUNICATIONS ACT PERMITS THE COMMISSION TO SET INTERCARRIER COMPENSATION BASED ON THE MOST EFFICIENT TECHNOLOGY AVAILABLE

In its 1996 Local Competition Order, the Commission adopted a TELRIC pricing methodology for reciprocal compensation to implement the reciprocal compensation requirements of the 1996 Telecommunication Acts (“1996 Act”).^{3/} TELRIC considers costs that a competitive carrier serving the complete market would incur based on the least-cost, most efficient network configuration and technology currently available.^{4/} As such, TELRIC does not take into account historical or embedded costs and does not cover the idiosyncratic costs of each and every carrier.

Notwithstanding Sprint’s assertion that the costs associated with all traffic-sensitive network elements must be factored into reciprocal compensation rates, the 1996 Act does not require the Commission to establish disparate charges based on the type of technology chosen by

^{3/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd 15499, 16023 ¶¶ 1054-55 (1996) (“Local Competition Order”).

^{4/} Id. at 15848 ¶ 685.

the terminating carrier. To the contrary, as the Commission concluded in the Local Competition Order, “using the incumbent LEC’s forward-looking costs for transport and termination of traffic as a proxy for the costs incurred by interconnecting carriers satisfies the requirement of section 252(d)(2) that costs be determined ‘on the basis of a reasonable approximation of the additional costs of terminating such calls.’”^{5/} The TELRIC principle “simulates the conditions in a competitive marketplace,” thereby allowing carriers “to produce efficiently and compete effectively, which should drive retail prices to their competitive levels.”^{6/} The Commission specifically found that TELRIC would “facilitate competition on a reasonable and efficient basis by all firms in the industry”.^{7/}

In virtually every context in which the Commission has been required to develop cost recovery mechanisms since the passage of the 1996 Act, it has employed forward-looking economic cost principles to further the goals established by Congress. For example, the Commission adopted the TELRIC mechanism to establish rates for unbundled network elements (“UNEs”). According to the Commission, adoption of forward-looking, symmetrical rates for UNEs would “encourage[] competition by removing barriers to entry and providing an opportunity for potential new entrants to purchase unbundled incumbent LEC network elements to compete efficiently to provide local exchange services.”^{8/} Furthermore, “this approach encourages facilities-based competition to the extent that new entrants, by designing more efficient network configurations, are able to provide the service at a lower cost than the

^{5/} Id. at 16040 ¶ 1085.

^{6/} Id. at 15846 ¶ 679.

^{7/} Id. (emphasis added); see also id. at 16023 ¶ 1054. Additionally, the Commission found that using forward-looking economic cost studies as proxies for reciprocal compensation for all terminating carriers is also consistent with 252(d)(2)(B)(ii), which prohibits establishing with particularity the additional costs of transporting or terminating calls. Id. at 16024 ¶ 1056.

^{8/} Id. at 15844 ¶ 672.

incumbent LEC”.⁹ The Commission has also determined that forward-looking pricing principles are appropriate in the access charge context.^{10/}

Similarly, pursuant to the Commission’s definition of TELRIC, the universal service funding mechanism does “not attempt[] to identify any particular company’s cost of providing the supported services,” but rather “estimat[es] the costs an efficient provider would incur in providing the supported services.”^{11/} The United States Court of Appeals for the Fifth Circuit recently upheld the Commission’s use of a forward-looking cost model for determining high-cost support for non-rural carriers, and found that “‘sufficient’ support does not mean that the amount of support provided must equal the costs reflected in carriers’ books.”^{12/}

As the Commission has consistently held for five years, the best way to promote competitive entry and to discourage discrimination is to establish the permissible level of charges for providing interconnection services based on the assumption that a carrier will use the most

^{9/} Id. at 15849 ¶ 685.

^{10/} See Price Cap Performance Review for Local Exchange Carriers; Access Charge Reforms, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642, 16642 ¶ 1 (1997). AT&T agrees with Sprint PCS that the forward-looking economic cost of terminating a call should not differ whether the charge for recovery of such costs is deemed reciprocal compensation or terminating exchange access. See Sprint Legal Memorandum at n.9. However, CMRS providers and IXC’s have traditionally exchanged traffic on a “bill and keep” basis and the FCC has never ruled that CMRS providers have the authority to charge IXC’s for terminating access. Rather than create a new and unprecedented carrier-to-carrier subsidy arrangement, the Commission should maintain the status quo with regard to IXC-CMRS traffic. Such an approach is consistent with Chairman Kennard’s expressed views that the Commission should not impose “legacy,” outdated telephone regulations -- which the Commission has been trying to phase out -- to situations in which it has not previously been applied. See Communications Daily, “Kennard Says He Won’t Regulate Internet Telephony” at 3 (May 25, 2000).

^{11/} Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, Tenth Report and Order, CC Docket No. 96-45, CC Docket No. 97-160, FCC 99-304, at ¶ 360 (Nov. 2 1999).

^{12/} Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393, 412 (5th Cir. 1999) cert. denied sub nom. Celpage Inc. v. F.C.C. 68 U.S.L.W. 3433 (May 30, 2000). See also Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, at ¶ 29 (rel. Nov. 2, 1999) (“Universal Service Ninth Order”).

efficient technology available and that its facilities will be used to capacity. Contrary to Sprint's contention, the 1996 Act does not compel the Commission to reverse this position now by permitting certain carriers to charge higher reciprocal compensation rates simply because they have chosen a more expensive technology or a technology that employs relatively more usage sensitive components.

II. THE PRINCIPLES UNDERLYING RECIPROCAL COMPENSATION SHOULD NOT BE RESTRUCTURED TO MEET ONE CARRIER'S SHORT TERM GOALS

By proposing that CMRS providers be permitted to charge reciprocal compensation for their allegedly higher additional costs of delivering calls to mobile customers, Sprint asks the Commission to implement an entirely new intercarrier compensation principle. Adoption of Sprint's proposal would require other carriers and their customers to cover costs incurred by Sprint solely as a result of its technology choice. To the extent the delivery of traffic to a CMRS customer entails higher per-call costs than call delivery in the wireline context, then the CMRS customers who have made the decision to use and benefit from mobile technology should be the ones to bear those additional costs.^{13/}

A. The Commission Should Take a Broad and Consistent Approach to Intercarrier Compensation

Carriers compensate each other for the use of the other carrier's network or services in a variety of contexts, including termination of local and long distance calls, number portability, UNEs, and resale. AT&T, as an IXC, a competitive LEC, and one of the world's largest CMRS

^{13/} Curiously, Sprint neglects to specify or even suggest what its additional costs of terminating calls might be. In any event, even apart from the question of whether reciprocal compensation rates should be tied to a carrier's particular choice of technology, efficiency, or cost structure, Sprint's classification of incremental and fixed costs is fundamentally flawed. In classifying all of its costs save for handset costs as incremental, Sprint ignores the fact that these costs are incremental only with respect to its own customers' decisions to purchase inbound and outbound CMRS service and not to the decision of a calling party to dial a telephone number that happens to be associated with a CMRS carrier.

providers is both a payer to, and a recipient of funds from, other companies under these schemes. Accordingly, AT&T understands well how important it is for the Commission to develop and implement comprehensive compensation principles that encourage efficiency and deter anticompetitive behavior.

The Commission also has recognized that congruity in cost recovery makes sense. As noted above, the Commission determined that not only is it legally required to apply the same pricing rule for the purchase of UNEs (including collocation and interconnection) and reciprocal compensation for transport and termination, it is good policy. Application of the same principles across the board, “provides greater consistency and guidance to the industry, regulators, and the courts” and reduces the regulatory burdens on state commissions.^{14/}

Reciprocal compensation for local calls is intimately interrelated with all other carrier compensation schemes.^{15/} Therefore, the changes Sprint proposes for reciprocal compensation would necessarily have far-reaching effects on every other compensation, cost recovery, and subsidy regime developed by the Commission. If the Commission decides that carriers with higher costs are permitted to charge higher termination rates for local calls, it may well be forced

^{14/} Local Competition Order at 15816 ¶ 629.

^{15/} See id. at 15862 ¶ 716. The universal service support mechanism, for example, is based on the forward-looking cost of provisioning efficiently supported services -- which is itself based on use of the same network elements employed in establishing reciprocal compensation rates. See Federal-State Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 8899-8900 ¶¶ 224-26 (1997); Federal-State Board on Universal Service, Recommended Decision, 12 FCC Rcd 87, 230-33 (1996); see also Universal Service Ninth Order at ¶ 13 (explaining that traditionally, universal service support programs were designed to support the local loop and switching costs of incumbent LECs serving high-cost areas). Similarly, access services for interexchange calls employ the same network elements. In addition, for federal number portability cost recovery, the Commission refers to factors identified in deriving the costs of UNEs. See Telephone Number Portability, Third Report and Order, 13 FCC Rcd 11701, 11740 ¶ 74 (1998); Telephone Number Portability Cost Classification Proceeding, Memorandum Opinion and Order, 13 FCC Rcd 24495, 24505, 24508-10 ¶¶ 22, 33, 37 (1998); Long-Term Telephone Number Portability Tariff Filings of Ameritech Operating Companies; GTE System Telephone Companies; GTE Telephone Operating Companies; Pacific Bell; Southwestern Bell Telephone Company, Order Designating Issues for Investigation, 14 FCC Rcd 3367 (1999).

to rethink its decisions on access charges, universal service, UNEs, number portability, and virtually all other cost recovery mechanisms it has put in place in recent years. Moreover, if Sprint's approach is adopted, it would not be possible for the Commission to limit the impact to call termination on CMRS systems. Every carrier that uses a technology different from the wireline standard, or incorporates different elements into its network would seize the opportunity to calculate compensation based on costs specific to its own situation. At a point in which the Commission should be attempting to make consistent the myriad of pricing schemes now being used, it should refrain from considering changes to the regime that should be used as a model for all the rest.

B. Use of Forward-Looking, Symmetrical Cost Principles Promotes Efficiency and Competition

The Commission has correctly concluded that TELRIC principles that specify unit costs calculated using the most efficient wireline technology is the most appropriate mechanism for establishing reciprocal compensation for all interconnecting carriers. In this regard, the Commission stated that “[a] symmetric compensation rule gives a competing carrier correct incentives to minimize its own costs of termination because its termination revenues do not vary directly with changes in its own costs.”^{16/} Attempts to calculate individual carriers' costs without regard to forward-looking costing principles would result in a naked subsidy to less efficient technologies.

Intercarrier compensation structures should ensure that the unique costs of a carrier's technology choices are imposed on the customers that have selected the technology in question. Because CMRS customers derive the benefit of the wireless technology, in particular the mobility made possible by the use of reusable spectrum instead of dedicated loops, it is

^{16/} Local Competition Order at 16040 ¶ 1086.

appropriate for them to absorb any network costs above TELRIC levels. Permitting a carrier to shift the costs of those choices to originating end users that bear no responsibility for their selection would force those users to pay for the benefits enjoyed by others and will undermine pricing and technology efficiency. As the Commission has recognized:

While, on the originating end, carriers have different options to reach their revenue-paying customers -- including their own network facilities, purchasing access to unbundled elements of the incumbent LEC, or resale -- they have no realistic alternatives for terminating traffic destined for competing carriers' subscribers other than to use those carriers' networks. Thus, all carriers -- incumbent LECs as well as competing carriers -- have greater incentive and opportunity to charge prices in excess of economically efficient levels on the terminating end.^{17/}

Symmetry in reciprocal compensation also helps equalize bargaining power between incumbents and new entrants. As the Commission found in the Local Competition Order, symmetrical rates reduce an ILEC's ability to use its superior market position to negotiate excessively high rates.^{18/} In addition, a symmetrical compensation structure is easier to manage than one that uses asymmetrical rates based on the costs of each carrier.

While certain carriers, including AT&T's wireless affiliate, would enjoy large financial rewards under Sprint's proposal, the Commission should not take such a narrow approach toward cost recovery. In the long run, all carriers and the public interest would benefit from use of a

^{17/} Id. at 16025 ¶ 1058.

^{18/} Id. at 16041 ¶ 1087. The Commission reiterated the benefit of equal bargaining provided to CLECs through the use of TELRIC principles in its decision denying Ameritech's Section 271 Application. See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20550 n.22 (1997). "An incumbent LEC has a lower incremental cost of serving any group of customers because of the economies of scope that come from serving all other LEC customers (i.e., because of the incumbent LEC's ubiquitous network). A new entrant has a higher incremental cost of serving the same group of customers with the facilities it constructs because it serves fewer customers overall and cannot achieve the same economies of scope. This is the rationale behind the Total Element Long-Run Incremental Cost (TELRIC) pricing methodology. TELRIC pricing for unbundled network elements enables the new entrant to serve its customers at the incumbent LEC's incremental costs and avoids inefficient duplication of the incumbent LEC's network." Id.

comprehensive costing mechanism that compels both providers and end users to make responsible and efficient choices. The decision to adopt a symmetrical forward-looking compensation scheme was well supported by economic principles, legally sound, and consistent with long-held Commission views on cost causation. It should not be abandoned now in favor of a regime that requires assessment of the costs incurred by each carrier, encourages gold plating, and forces originating carriers and calling parties to pay for the technology selections of the person answering the phone.

CONCLUSION

For the foregoing reasons, the Commission should reject Sprint's proposal and maintain use of its current TELRIC principles for reciprocal compensation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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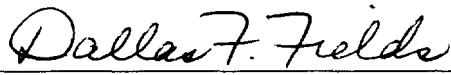
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